

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MICHAEL S. COCHRANE, State Bar No. 185730
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

13 SUSAN MARIA MARKLEIN
8032 7th Street, Apt. #3
14 Buena Park, CA 90621

15 Respondent.
16

Case No. 1H-2006-640

OAH No. L2008040597

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Stephanie Nunez (Complainant) is the Executive Officer of the
22 Respiratory Care Board of California. She brought this action solely in her official capacity and
23 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
24 California, by Michael S. Cochrane, Deputy Attorney General.

25 2. Respondent Susan Maria Marklein (Respondent) is representing herself in
26 this proceeding and has chosen not to exercise her right to be represented by counsel.

27 ///

28 ///

3. On or about November 21, 2006, Respondent filed an application for a Respiratory Care Practitioner License dated October 12, 2006, with the Board of Respiratory Care (Board).

JURISDICTION

4. Statement of Issues No. 1H-2006-640 was filed before the Board, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on April 2, 2008. Respondent timely filed her Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. 1H-2006-640 is attached as exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 1H-2006-640. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 1H-2006-640.

9. Respondent agrees that her application is subject to denial and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that a Respiratory Care Practitioner License is granted to Susan Maria Marklein. Said License is hereby revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of his current work schedule at all times for each place of employment.

2. BIOLOGICAL FLUID TESTING

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests

3

1 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
2 controlled substances.

3 If Respondent is unable to provide a specimen in a reasonable amount of time
4 from the request, while at the work site, Respondent understands that any Board representative
5 may request from the supervisor, manager or director on duty to observe Respondent in a manner
6 that does not interrupt or jeopardize patient care in any manner until such time Respondent
7 provides a specimen acceptable to the Board.

8 Failure to submit to testing or appear as requested by any Board representative for
9 testing, as directed shall constitute a violation of probation and shall result in the filing of an
10 accusation and/or a petition to revoke probation against Respondent's Respiratory Care
11 Practitioner License.

12 **3. ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING**
13 **SUBSTANCES**

14 Respondent shall completely abstain from the possession or use of alcohol,
15 controlled substances, dangerous drugs, and any and all other mood altering drugs, substances
16 and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed
17 practitioner as part of a documented medical treatment.

18 Respondent shall execute a release authorizing the release of pharmacy and
19 prescribing records as well as physical and mental health medical records. Respondent shall also
20 provide information of treating physicians, counselors or any other treating professionals as
21 requested by the Board.

22 Respondent shall ensure that he is not in the presence of or in the same physical
23 location as individuals who are using illegal substances, even if Respondent is not personally
24 ingesting the drug(s).

25 Any positive result that registers over the established laboratory cutoff level shall
26 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
27 to revoke probation against Respondent's respiratory care practitioner license.

28 ///

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

4. RESTRICTION OF PRACTICE

Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

5. SUPERVISOR QUARTERLY REPORTS

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

6. OBEY ALL LAWS

Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

7. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and

1 shall result in the filing of an accusation and/or a petition to revoke probation against
2 Respondent's respiratory care practitioner license.

3 Quarterly report forms will be provided by the Board. Respondent is responsible
4 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
5 year of probation and the entire length of probation as follows:

6 For the period covering January 1st through March 31st, reports are to be
7 completed and submitted between April 1st and April 7th. For the period covering April 1st
8 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
9 the period covering July 1st through September 30th, reports are to be completed and submitted
10 between October 1st and October 7th. For the period covering October 1st through December 31st,
11 reports are to be completed and submitted between January 1st and January 7th.

12 Failure to submit complete and timely reports shall constitute a violation of
13 probation.

14 **8. PROBATION MONITORING PROGRAM**

15 Respondent shall comply with requirements of the Board appointed probation
16 monitoring program, and shall, upon reasonable request, report to or appear to a local venue as
17 directed.

18 Respondent shall claim all certified mail issued by the Board, respond to all
19 notices of reasonable requests timely, and submit Annual Reports, Identification Update reports
20 or other reports similar in nature, as requested and directed by the Board or its representative.

21 Respondent is encouraged to contact the Board's Probation Program at any time
22 he has a question or concern regarding his terms and conditions of probation.

23 Failure to appear for any scheduled meeting or examination, or cooperate with the
24 requirements of the program, including timely submission of requested information, shall
25 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
26 revoke probation against Respondent's respiratory care practitioner license.

27 **9. PROBATION MONITORING COSTS**

28 All costs incurred for probation monitoring during the entire probation shall be

1 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased.
2 Respondent's failure to comply with all terms and conditions may also cause this amount to be
3 increased.

4 All payments for costs are to be sent directly to the Respiratory Care Board and
5 must be received by the date(s) specified. (Periods of tolling will not toll the probation
6 monitoring costs incurred.)

7 If Respondent is unable to submit costs for any month, he shall be required instead
8 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able
9 to submit the costs including payment amount(s). Supporting documentation and evidence of
10 why the Respondent is unable to make such payment(s) must accompany this submission.

11 Respondent understands that failure to submit costs timely is a violation of
12 probation and submission of evidence demonstrating financial hardship does not preclude the
13 Board from pursuing further disciplinary action. However, Respondent understands providing
14 evidence and supporting documentation of financial hardship may delay further disciplinary
15 action.

16 In addition to any other disciplinary action taken by the Board, an unrestricted
17 license will not be issued at the end of the probationary period and the respiratory care
18 practitioner license will not be renewed, until such time all probation monitoring costs have been
19 paid.

20 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
21 responsibility to reimburse the Board for costs incurred.

22 **10. EMPLOYMENT REQUIREMENT**

23 Respondent shall be employed a minimum of 24 hours per week as a respiratory
24 care practitioner for a minimum of 2/3 of his probation period.

25 Respondent may substitute successful completion of a minimum of thirty (30)
26 additional continuing education hours, beyond that which is required for license renewal, for
27 each 8 months of employment required. Respondent shall submit proof to the Board of

28 ///

successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

11. NOTICE TO EMPLOYER

Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms, if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

12. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for

mailing purposes, however the Respondent must also provide his physical residence address as well.

13. SURRENDER OF LICENSE

Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

14. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$2,528.00, and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that

///

1 providing evidence and supporting documentation of financial hardship may delay further
2 disciplinary action.

3 Consideration to financial hardship will not be given should Respondent violate
4 this term and condition, unless an unexpected AND unavoidable hardship is established from the
5 date of this order to the date payment(s) is due.

6 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
7 responsibility to reimburse the Board for these costs.

8 **15. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

9 Periods of residency or practice outside California, whether the periods of
10 residency or practice are temporary or permanent, will toll the probation period, but will not toll
11 the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of
12 California for more than 30 days must be reported to the Board in writing prior to departure.
13 Respondent shall notify the Board, in writing, within 14 days, upon his return to California and
14 prior to the commencement of any employment where representation as a respiratory care
15 practitioner is/was provided.

16 **16. VALID LICENSE STATUS**

17 Respondent shall maintain a current, active and valid license for the length of the
18 probation period. Failure to pay all fees and meet Continuing Education requirements prior to
19 his license expiration date shall constitute a violation of probation.

20 **17. VIOLATION OF PROBATION**

21 If Respondent violates any term of the probation in any respect, the Board, after
22 giving Respondent notice and the opportunity to be heard, may revoke probation and carry out
23 the disciplinary order that was stayed. If a petition to revoke probation is filed against
24 Respondent during probation, the Board shall have continuing jurisdiction and the period of
25 probation shall be extended until the matter is final. No petition for modification of penalty shall
26 be considered while there is an accusation or petition to revoke probation or other penalty
27 pending against Respondent.

18. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License.

I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: June 25, 2008.

Original signed by: _____
SUSAN MARIA MARKLEIN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board.

DATED: June 26, 2008

EDMUND G. BROWN JR.,
Attorney General of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

Original signed by: _____
MICHAEL S. COCHRANE
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

SUSAN MARIA MARKLEIN
8032 7th Street, Apt. #3
Buena Park, CA 90621

Respondent.

Case No. 1H-2006-640

OAH No. L2008040597

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board as its Decision in this matter.

This Decision shall become effective on August 28, 2008.

It is so ORDERED August 15, 2008.

Original signed by: _____

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA